

UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	EB Docket No. 02-21
)	
Peninsula Communications, Inc.)	
	)	File No. EB 01-1H-0609
Licensee of stations	)	FRN: 0001-5712-15
KGTL, Homer, Alaska;	)	Facility ID Nos. 52152
KXBA(FM), Nikiski, Alaska;	)	86717
KWVV-FM, Homer, Alaska; and	)	52145
KPEN-FM, Soldotna, Alaska.	)	52149
)	
Licensee of FM translator stations)	
K292ED, Kachemak City, Alaska;	)	52150
K285DU, Homer, Alaska;	)	52157
K285EG and K272DG, Seward, Alaska	)	52158 and 52160
)	
Former licensee of FM translator)	
stations)	
K285EF, Kenai, Alaska;)	
K283AB, Kenai/Soldotna, Alaska;)	
K257DB, Anchor Point, Alaska;)	
K265CK, Kachemak City, Alaska;)	
K272CN, Homer, Alaska; and)	
K274AB and K285AA, Kodiak, Alaska)	

Witness: David F. Becker

Volume: 2

Pages: 32 through 179

Place: Homer, Alaska

Date: August 14, 2002

HERITAGE REPORTING CORPORATION

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ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 205545

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DEPOSITION OF DAVID F. BECKER

August 14, 2002

Pursuant to Notice, the deposition of David F. Becker was taken before Merriam Warrington, Notary Public in and for the State of Alaska, and Reporter for H & M Company, at Homer, Alaska, on the fourteenth day of August, 2002, beginning at the hour of 9:00 a.m.

Heritage Reporting Corporation
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P R O C E E D I N G S

August 14, 2002

(On record at 9:11 a.m.)

THE REPORTER: On record. My name is Merriam Warrington, I am the recording clerk for H & M Company who is taking this deposition today for Kron Associates Court Reporting.

Today's date is Wednesday, August 14, 2002, and the time is 9:11. We are taking this deposition at the Best Western Bidarka Inn, 575 Sterling Highway, Homer, Alaska 99603.

The case is before the Federal Communications Commission, Washington D.C., EB Docket Number 02-21, File Number EB 01-1H-0609, FRN 0001-5712-15, in the matter of Peninsula Communications, Incorporated. The deponent's name is David Becker. Would the counsel please identify himself for the record?

MR. SHOOK: James Shook on behalf of the Chief Enforcement Bureau, Federal Communications Commission.

MR. SOUTHMAYD: Jeffrey D. Southmayd of the Southmayd and Miller on behalf of Peninsula Communications.

THE REPORTER: Are there.....

MR. SHOOK: For the record Judy Lancaster is also here on behalf of the Chief Enforcement Bureau.

THE REPORTER: And also present is Eileen Becker. Are

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1 there any stipulations to go on the record today?

2 MR. SHOOK: None that I'm aware of.

3 THE REPORTER: Okay. Mr. Becker, would you please
4 raise your right hand?

5 (Oath administered)

6 MR. BECKER: I do.

7 **DAVID F. BECKER**

8 a witness, called for examination by counsel on behalf
9 of the Federal Communications Commission, being first duly
10 sworn, examined and testified as follows:

11 THE REPORTER: Would you please state your name,
12 mailing address and phone number for the record?

13 THE WITNESS: David F. Becker, P.O. Box 109, Homer,
14 Alaska 99603.

15 THE REPORTER: And your phone number?

16 THE WITNESS: (907) 235-6000 which is work, 235-7526 my
17 home phone.

18 THE REPORTER: And your occupation?

19 THE WITNESS: Broadcaster.

20 THE REPORTER: Thank you. Mr. Counsel you may proceed.

21 MR. SHOOK: Thank you.

22 **DIRECT EXAMINATION**

23 BY MR. SHOOK:

24 Q Mr. Becker, are you on any medication that could affect
25 the testimony you're about to give today?

- 1 A No.
- 2 Q Is there any other circumstance that you're aware of
3 that could affect your testimony today?
- 4 A None.
- 5 Q You are the President of Peninsula Communications,
6 Inc.?
- 7 A Yes.
- 8 Q And your wife Eileen is Peninsula's Secretary
9 Treasurer?
- 10 A That's correct.
- 11 Q Have you been Peninsula's President since the company's
12 inception?
- 13 A Yes.
- 14 Q Approximately when was Peninsula incorporated?
- 15 A August of 1978.
- 16 Q And it was incorporated in Alaska?
- 17 A Yes.
- 18 Q Did Peninsula issue stock at or about the time of its
19 incorporation?
- 20 A Uh-huh (affirmative).
- 21 Q That would be a yes?
- 22 A Yes.
- 23 Q To whom did Peninsula issue stock?
- 24 A Initially to David and Eileen Becker and to Mark and
25 Joyce Goodwin.

- 1 Q Did there come a time when Mark Goodwin and Joyce
2 Goodwin sold all of their stock in Peninsula?
- 3 A Yes.
- 4 Q Did Mark Goodwin sell all of his stock to your wife,
5 Eileen?
- 6 A I think that's the way it went. Let me check here.
7 Yes.
- 8 Q And did Joyce Goodwin sell all of her stock to you?
- 9 A That's correct, yes.
- 10 Q Now the copies of the stock certificate sent to us in
11 discovery and that you're looking at right now reflect
12 that the sales by Mark and Joyce to Eileen and yourself
13 occurred on October 20, 1982. Would that comport with
14 your memory as to when the sale of the stock occurred?
- 15 A Yes.
- 16 Q Are you now a 50 percent owner of Peninsula?
- 17 A Yes.
- 18 Q And your wife Eileen owns the other 50 percent?
- 19 A Yes.
- 20 Q Since October 1982 have you and Eileen been the only
21 owners of Peninsula stock?
- 22 A Yes.
- 23 Q Since October 20, 1982 have you and Eileen always each
24 owned 50 percent of Peninsula's stock?
- 25 A Yes.

- 1 Q Has Mark Goodwin had any role whatsoever in Peninsula
2 since October 20, 1982?
- 3 A No.
- 4 Q Has Joyce Goodwin had any role whatsoever in Peninsula
5 since October 20, 1982?
- 6 A No.
- 7 Q Do you hold a college degree?
- 8 A Yes, two.
- 9 Q And what are those degrees in?
- 10 A Bachelor of Science, Electronic Engineering, Cal Poly,
11 1967. That's California State Polytechnic University,
12 San Luis Obispo, California. Master of Science,
13 Electrical Engineering, University of California, Santa
14 Barbara, 1970.
- 15 Q And now does that -- what you just mentioned also
16 include post-college graduate degrees?
- 17 A The Master of Science is a -- is a graduate degree.
- 18 Q Do you currently perform engineering services for
19 Peninsula?
- 20 A I do all of it.
- 21 Q You do all of it.
- 22 A Uh-huh (affirmative).
- 23 Q And has that been the case since the company's
24 inception?
- 25 A Yes.

- 1 Q Now I'd like to get on the record as good an
2 understanding as we can of the current configuration of
3 the various stations that Peninsula has and the
4 communities they serve and how they go about doing
5 that.
- 6 A Uh-huh (affirmative).
- 7 Q So, as I understand it Peninsula has an AM station with
8 the call sign of KGTL?
- 9 A Yes.
- 10 Q And that operates from Homer, correct?
- 11 A Yes.
- 12 Q And it has an effective operating -- or an effective
13 radiated power of about 5,000 watts?
- 14 A Yes.
- 15 Q And that is the only AM station that Peninsula has a
16 license for, correct?
- 17 A Yes.
- 18 Q Peninsula also has three FM stations, correct?
- 19 A Yes.
- 20 Q One of which is KWVV FM operating from Homer?
- 21 A Yes.
- 22 Q And that has an effective radiated power of about
23 100,000 watts, correct?
- 24 A Yes.
- 25 Q Peninsula also has a full power station that is

- 1 licensed to the community of Soldotna, correct?
- 2 A Yes.
- 3 Q And that is KPEN.....
- 4 A Yes.
- 5 QFM?
- 6 A Uh-huh (affirmative).
- 7 Q And I don't have that at my fingertips, what is the
- 8 power that.....
- 9 A Twenty-five thousand.
- 10 Q Twenty-five thousand watts. And then there's also --
- 11 well, I've heard of it as K Bay. Is -- what are the -
- 12 - what's the call sign of that station?
- 13 A KXBA.
- 14 Q And that operates -- it's licensed to Nikiski?
- 15 A Nikiski, uh-huh (affirmative).
- 16 Q Okay. And that is a community in the Kenai.....
- 17 A Yes.
- 18 Qarea? All right. Now those are the only full
- 19 power stations that Peninsula has, correct?
- 20 A Yes, that's correct.
- 21 Q And Peninsula has a number of translators and we'll get
- 22 into, you know, where it is that they serve. But there
- 23 are two translators that operate in the Kenai Soldotna
- 24 area, correct?
- 25 A Yes.

1 Q And one of them is licensed to the community of Kenai?

2 A Uh-huh (affirmative).

3 Q And the other is licensed to Soldotna?

4 A One is dual licensed to Kenai and Soldotna, the other

5 is licensed to Kenai.

6 Q Very good. And now what stations or what station do

7 those translators rebroadcast?

8 A KWVV FM.

9 Q So in a sense that allows the Homer station to be heard

10 clearly in the Kenai and Soldotna area?

11 A It -- yes. Although we have people who listen directly

12 to our main signal as well.

13 Q Oh, with the 100,000.....

14 A Yes.

15 Qwatts the signal can reach many of the.....

16 A It's readily listenable in most areas up there anyway.

17 Q Okay. Now in the Homer area it is possible to hear

18 KPEN via a translator, correct?

19 A Yes.

20 Q And what translator or translators would those be?

21 A Well, there's -- you want the call signs?

22 Q If you have them at your fingertips, otherwise whatever

23 information.

24 A I don't have them committed to memory, but it appears

25 that 102.3 in Homer, 99.3 in Anchor Point and Seldovia

- 1 and 100.9 in Kachemak City.
- 2 Q And it is also possible to hear Peninsula's full
- 3 powered stations on Kodiak Island, correct, or at least
- 4 a part of Kodiak Island?
- 5 A KWVW and KPEN in Kodiak, yes, via translator.
- 6 Q And it is also possible to hear them in Seward,
- 7 correct?
- 8 A Yes.
- 9 Q And that is both KPEN and KWVW?
- 10 A Yes.
- 11 Q And how is it that the signal reaches Seward?
- 12 A It's fed via satellite.
- 13 Q And that is the case for both KPEN and KWVW?
- 14 A Yes.
- 15 Q Now do you currently have any responsibilities
- 16 pertaining to sales of advertising time on any of
- 17 Peninsula's stations?
- 18 A Well, I'm the manager so I am responsible for sales.
- 19 Q Well, do you personally -- are you personally involved
- 20 in sales or you basically just oversee what other
- 21 people do?
- 22 A No, I sell from time to time.
- 23 Q You do.
- 24 A Sure.
- 25 Q And other than yourself who has sales responsibilities?

- 1 A Terry Coval is my General Sales Manager, that's Tiarnan
2 Coval, T-I-A-R-N-A-N, C-O-V-A-L. Tim White sells who
3 also is my Operations Manager in Homer. Gary Hondel is
4 another salesman who works in the Kenai Soldotna area.
- 5 Q Is there anybody who works in the Kodiak area?
- 6 A Terry Coval services the Kodiak area.
- 7 Q And where is he physically located?
- 8 A Well, he lives in Kenai and he works out of our Kenai
9 office.
- 10 Q In order to service Kodiak he does that by telephone?
- 11 A Telephone, fax and then occasionally goes down there.
- 12 Q And who, if anyone, services the stations in Seward?
- 13 A Well, Terry and Gary both take care of Seward.
14 Primarily Gary Hondel, but it -- you know, if he's tied
15 up Terry will handle it since he's the General Sales
16 Manager.
- 17 Q And by handling it does that involve going to Seward in
18 person or is this basically done over the telephone?
- 19 A Things are done on the phone as well as visiting the
20 area too. So.
- 21 Q Now with respect to the sale of advertising time
22 relative to Kodiak, do you have a notion as to
23 approximately how much advertising revenue per month is
24 generated by sales activity in Kodiak?
- 25 A It varies and I couldn't tell you off the top of my

1 head.

2 Q There hasn't been a consistent figure over.....

3 A Unh-unh (negative).

4 Qthe last year or so? Now with respect to the sale
5 of advertising time in Seward, approximately how much
6 advertising revenue is generated per month?

7 A I couldn't tell you, I have -- I have no documents in
8 front of me that show what our sales figures are.

9 Q Now does anyone currently travel to Anchorage or deal
10 with people in Anchorage to sell advertising time for
11 Peninsula stations?

12 A From time to time Terry Coval will go to Anchorage and
13 sell in Anchorage.

14 Q And I believe you had indicated that Mr. Coval is the
15 person who would basically be responsible for the sale
16 of advertising time in Kenai and Soldotna?

17 A He covers that area as well as our associate, Gary
18 Hondel.

19 Q And do you have -- would you have any knowledge as to
20 the approximate advertising revenue per month generated
21 by sales activities in the Kenai and Soldotna area?

22 A Well, I believe I supplied the Commission with a
23 summary of our balance sheets and our income statement
24 and I think if I remember right the income statement
25 had a breakdown of areas. So.....

- 1 Q So that's the document we should refer to in order
2 to.....
- 3 A Well.....
- 4 Q get the best information for that?
- 5 A I provided an income statement so you should be able to
6 find it there.
- 7 Q Well, I just -- all I'm clarifying is that that's the
8 place we should look then.
- 9 A Uh-huh (affirmative).
- 10 Q All right. Now does anyone in particular sell
11 advertising for KPEN in the Homer area?
- 12 A Well, Tim White covers the Homer area and he will sell
13 anything that's available to be sold, including any of
14 the four stations. We try to sell everything we can.
15 We have to in order to survive.
- 16 Q Now in the Homer area the station that we've -- that
17 was noted as K Bay.....
- 18 A Huh-hum (interrogative).
- 19 Qis that a station that is received in the Homer
20 area?
- 21 A There is a translator for K Bay.
- 22 Q And what translator is that?
- 23 A It's owned by Turquoise Broadcasting, it's on 105.9.
- 24 Q Now who are Peninsula's current Directors?
- 25 A Eileen Becker and myself.

- 1 Q Has there ever been a time when persons other than
2 yourself and Eileen Becker were Directors of Peninsula?
- 3 A There was back in the -- I can't tell you exactly the
4 date. We had Bruce Willard who was a Board member for
5 a time. But it was in the late or middle 80's. I
6 don't -- I don't have the exact date.
- 7 Q All right. In that regard I'd like you to refer to a
8 document that's probably at the top of your stack right
9 now. And it's a letter that bears the date of January
10 30, 1989. It's a two page letter and it's addressed to
11 Ms. Edith Wise and it's signed by Jeffrey D. Southmayd.
12 And just if you could read that letter to yourself.
- 13 (Pause)
- 14 Q Now have you had a chance to read the letter?
- 15 A Yes.
- 16 Q Now did you authorize Mr. Southmayd to represent to the
17 Commission that Peninsula's Board had been expanded to
18 include a local resident of Soldotna?
- 19 A Uh-huh (affirmative).
- 20 Q And.....
- 21 A That was Bruce Willard.
- 22 Q That was Bruce Willard.
- 23 A Yes.
- 24 Q And how long did Bruce Willard remain a Director of
25 Peninsula?

- 1 A He wasn't really a Director, he was a member of our
2 Board. I cannot tell you when he left. He did move
3 back, his daughter became ill and he moved to Ohio --
4 or Iowa. I can't tell you the date.
- 5 Q Okay. Just so I think we're using the same
6 terminology, you referenced Board and I used the term
7 Director.
- 8 A Uh-huh (affirmative).
- 9 Q I take it we're talking about the same thing, a member
10 of the Board of Directors?
- 11 A Yes.
- 12 Q Now did there come a time when Peninsula informed the
13 Commission that -- now, what was his name again?
- 14 A Bruce Willard.
- 15 Q That Mr. Willard had left?
- 16 A Through probably our ownership reports at some point.
17 After he left the next ownership report that came out
18 that we filed would not have had him on there.
- 19 Q But there would have been an ownership report that
20 would have reflected him as being there and then.....
- 21 A Yes.
- 22 Qthe next one would have shown that he had left?
- 23 A I think that's correct.
- 24 Q Now do you hold annual meetings of the Board of
25 Directors?

- 1 A Yes, we do.
- 2 Q And do you memorialize such meetings in any way?
- 3 A I did, we do. I supplied the Commission with our
4 minutes.
- 5 Q And have you memorialized such meetings since the
6 company's inception?
- 7 A Yes.
- 8 Q Now would it be fair to say that you hold the ultimate
9 decision making authority in Peninsula?
- 10 A No, it would be fair to say that Eileen and I jointly
11 make that decision.
- 12 Q Would it be fair to say that you keep up with the
13 Commission's rules regarding translators?
- 14 A Yes.
- 15 Q Now, the next document in the stack, I'm placing before
16 you a letter dated July 24, 1981 from yourself to
17 William J. Tricarico. It's a one page letter and is
18 that your signature that appears somewhat sketchily at
19 the bottom of the letter, toward the bottom of the
20 letter?
- 21 A Uh-huh (affirmative). Yes.
- 22 Q Now, the next document is styled an Opposition. There
23 are no numbers to the pages but if you look at the
24 various numbers that seem to separate paragraphs, one
25 from another, following paragraph 10 the next page

1 after that there will be a place where a signature
2 appears. And it appears to be your signature and I ask
3 you whether it is.

4 A Yes.

5 Q Now did you draft this pleading styled opposition?

6 A Yes.

7 Q Did you do the legal research for the pleading?

8 A Yes.

9 Q Now the next letter that I want you to look at bears a
10 date of October 19, 1982. And it concerns file number
11 BPFT-820414IA and it shows a -- that it appears to be
12 from a person named Thomas J. English. Do you have
13 that letter?

14 A Yes, I see it.

15 Q Now for purposes of clarifying what we're looking at
16 could you please read into the record the second
17 paragraph of the indented portion of the letter?

18 A Absent a showing of severe terrain problems which would
19 limit communities' coverage a rule waiver to permit 100
20 watts TPO does not appear justified. Substitution
21 proposed on the antenna by dual high gain directional
22 with coupled 10 watt transmitters would provide nearly
23 equivalent ERP toward subject communities at
24 approximately same equipment cost. Location of
25 proposed translator within KQOK, 1 millivolt per meter

1 contour, is in contravention of Rule Section 74.1232,
2 would place your proposal in jeopardy should KQOK
3 object either before or after construction.

4 Q Now, would it be fair to say that as a consequence of
5 this letter that in the early 80's you understood that
6 one factor in determining whether waiver requests of
7 then Section 74.1232(d) of the Commission's rules was
8 whether or not another FM station objected because the
9 translator's contour overlapped the objecting FM
10 station's contour?

11 A Yes. However, 74.1232 is permissive in nature as the
12 Commission found in 81-484.

13 Q Now the next document I'd like to look at is the next
14 one in the stack. And it appears to be an application
15 amendment signed by you, if you look at the second page
16 you'll see a signature. And is that your signature?

17 A Yes.

18 Q And it appears that it was signed on November 3, 1982
19 in connection with a construction permit application
20 for a new FM translator to serve Kenai and Soldotna.

21 A Yes.

22 Q Now, moving on to Exhibit 1 of the application which
23 appears on the following page.

24 A Huh-hum (interrogative).

25 Q If you could read that to yourself. And then the

1 question that I have for you is if you could summarize
2 your understanding of what it is Exhibit 1 seeks.

3 A Seeks a Wrangell Radio Group waiver.

4 Q In connection with a particular rule?

5 A Well, it'd be 74.1232. And since the Commission had
6 ruled that KQOK could have a translator within the
7 contour of KGTL FM likewise we were seeking to operate
8 a translator within the contour of KQOK since the
9 Commission had come out with a full order stating that
10 the rule was permissive in nature and did -- and
11 permitted but did not require the termination of a
12 translator that was operating within the contour of
13 another FM station.

14 Q So would it be fair to state that you thought among
15 other things that the Commission should approve
16 Peninsula's application for the Kenai Soldotna
17 translator.....

18 A Absolutely.

19 Qbecause the Commission had declined to terminate a
20 translator for KSRM, Inc. in Homer?

21 A That's correct.

22 Q Now the next document that I would like you to look at
23 is the Commission decision, FCC 81-484 in the matter -
24 - In Re: Petition of Peninsula Communications, Inc.
25 It was released January 11, 1982. And you mentioned

1 this before, but just to clarify it, did you seek to
2 terminate the operation of KSRM, Inc.'s translator
3 station K265AG?

4 A We did.

5 Q Were you successful?

6 A No.

7 Q And why not?

8 A Because the Commission found that the rule was
9 permissive in nature and they also found that they
10 thought two FM stations serving Homer was better than
11 one.

12 Q The next document I'd like you to look at is styled
13 Notice of Inquiry in the matter of Amendment of Part 74
14 of the Commission's Rules Concerning FM Translator
15 Stations, MM Docket Number 88-140 released June 2,
16 1988. For background purposes if you could please read
17 aloud the second paragraph.

18 A Our objective in this proceeding is to examine and,
19 where necessary or appropriate, to review our policy
20 regarding the authorization and operation of FM
21 translators consistent with our overall FM allocations
22 plan. You want the whole paragraph?

23 Q Please.

24 A Initially we wish to make it clear we do not intend to
25 alter our basic policy approach of authorizing FM

1 translators for the purpose of providing service that
2 is supplemental to the service provided by full service
3 FM stations. We continue to believe that the most
4 effective and efficient means of providing FM service
5 to the public is through the higher power facilities of
6 full service stations. In this regard we seek to
7 consider whether there is any need to modify our rules
8 to insure that translator stations do not adversely
9 affect the operation of full service stations. We also
10 intend to consider policy options for expanding the FM
11 translator authority by suggested -- as suggested by
12 Petitioners to the extent that such policies would be
13 consistent with the secondary nature of this authority.
14 We request public comment in all aspects of our general
15 policies regarding FM translators as well as specific
16 proposals for rules and regulations to implement any
17 changes in these policies.

18 Q Thank you. Now I would like to direct your attention
19 to paragraph 36 which appears on what is printed page
20 3669. And if you could please read into the record the
21 first sentence.

22 A Your document is not complete.

23 Q Okay. Let me give you this copy then.

24 A Well, it does not have all the footnotes that accompany
25 this particular document.

1 Q Oh. Well, that's something that can be corrected if
2 need be at some point. But for purposes of this
3 deposition I would like you to focus on paragraph 36.

4 A Huh-hum (interrogative). Under current practice the
5 need for a translator station is presumed upon the
6 filing of the application. The burden is on the
7 objector to make a *prima facie* showing of lack of need.
8 Only if this *prima facie* showing of lack of need is
9 made or if an applicant is seeking more than one FM
10 translator to rebroadcast the same primary station must
11 the -- let's see, rebroadcast the primary station, must
12 the applicant document a need for -- it does not make
13 sense.

14 Q Okay. You can stop there. Now I'd like to direct your
15 attention to paragraph 37 and if you could just read
16 that paragraph to yourself.

17 (Pause)

18 A Huh-hum (interrogative).

19 Q Has it been your experience that the Commission's
20 assessment that operating translators typically costs
21 much less to build and operate than full service
22 stations would be true?

23 A Yes.

24 Q Would it also comport with your experience that
25 translator equipment also requires little equipment and

- 1 occupies only a small space relative to broadcast
2 stations?
- 3 A Certainly.
- 4 Q Now before today did there come a time when you
5 personally became aware of any of the portions of the
6 Commission's 1988 Notice of Inquiry that you just read?
- 7 A I've read it all.
- 8 Q You had read it all.
- 9 A However you're missing footnotes.
- 10 Q That's perfectly fine at this point.
- 11 A Huh-hum (interrogative).
- 12 Q So I take it.....
- 13 A Particularly footnote 59 is missing. You've left it
14 off.
- 15 Q Oh, sir, we'll get to footnote 59.
- 16 A Okay.
- 17 Q It appears in a different order. I know what you're
18 thinking of and we'll get there. So from your answer
19 would it be the case that you read the Commission's
20 1988 Notice of Inquiry approximately at the time that
21 it was released?
- 22 A Well, I didn't read it at the time it was released, I
23 have read it sometime after it was released. I
24 couldn't tell you when.
- 25 Q Okay.

1 A It's for the most part irrelevant.

2 Q Oh, we're just laying groundwork here and I appreciate
3 your assessment. Now did you happen to discuss the
4 Notice of Inquiry with anyone at about the time that it
5 was released?

6 A No.

7 Q Now in terms of background and getting the timing right
8 of this, at about the time of the Commission's 1988
9 Notice of Inquiry Peninsula operated two FM stations in
10 Kodiak. Correct?

11 A Uh-huh (affirmative).

12 Q That would be a yes?

13 A Yes.

14 Q Sometimes uh-huh doesn't translate.....

15 A Yeah, that's fine, I will -- I will say yes from here
16 on out.

17 Q Okay. And also at about that time Peninsula operated
18 an FM translator serving Kenai and Soldotna which was
19 rebroadcasting K Wave?

20 A Yes.

21 Q And also at about that time Peninsula operated an FM
22 translator serving Anchor Point which was
23 rebroadcasting KPEN?

24 A Yes.

25 Q And also about that time Peninsula operated an FM

1 translator serving Homer which was rebroadcasting KPEN?

2 A Yes.

3 Q Did Peninsula prepare comments in response to the.....

4 A No.

5 QCommission's Notice of Inquiry? No, okay. Now
6 the next document I'd like you to look at is the -- is
7 styled Notice of Proposed Rulemaking in MM Docket
8 Number 88-140 released by the Commission on March 28,
9 1990. Directing your attention to paragraph one, could
10 you please read that paragraph into the record?

11 A On March 24, 1988 Commission adopted a Notice of
12 Inquiry. Lots of references, you want all the
13 references? 3 FCC Record 3664, 1988, to study the role
14 of FM translators in the radio broadcast service.
15 Therein we sought comment on all aspects of our general
16 policies regarding FM translators as well as specific
17 proposals for revisions to our rules regarding the
18 authorization and operation of FM translators. By this
19 Notice of Proposed Rulemaking Notice we propose to
20 amend the rules governing the FM translator service
21 based on the comments submitted in response to the
22 Notice of Inquiry and our own analysis of the
23 translator service. We propose to restructure our FM
24 translator rules consistent with the intended purpose
25 of this service which is to provide supplementary

1 service to areas in which direct reception of radio
2 broadcast stations is unsatisfactory due to distance or
3 intervening terrain barriers. In particular we propose
4 to revise and clarify the FM translator rules including
5 new rules for ownership and financial support of
6 translators. Methods for selecting among translator
7 applications the definitions of major change and
8 translator coverage areas, the commercial, non-
9 commercial and auxiliary band frequencies, interference
10 criteria, technical requirements for translators.

11 Q Thank you. Now I also direct your attention to
12 paragraph 17 which notes a proposed classification of
13 FM translators as either fill in or other areas. And
14 if you could just read that to yourself.

15 A Okay.

16 Q I also direct your attention to paragraph 18 and if you
17 could please read into the record the first two
18 sentences.

19 A With respect to translator ownership we propose to
20 modify the existing rule which provides that an
21 authorization for a commercial FM translator which is
22 intended to provide reception to places which are
23 beyond the predicted one millivolt per meter contour of
24 the primary station within the predicted one millivolt
25 per meter contour of another commercial FM station

1 assigned to a different principle community will not be
2 granted to the licensee of a radio broad -- of an FM
3 radio station. Our proposed rule states that ownership
4 of a commercial FM translator will not be available to
5 the licensee of an FM radio broadcast station if the
6 predicted one millivolt per meter contour of the FM
7 translator goes beyond the predicted contour of the
8 primary station.

9 Q Thank you. Now I next direct your attention to
10 paragraph 20 and I ask that you read the first two
11 sentences aloud into the record.

12 A We are not persuaded however that it is desirable to
13 allow commercial FM licensees to establish translators
14 beyond their protected contours while the establishment
15 of independent party translators in -- in these other
16 locations appears to indicate a public desire for the
17 programming. FM radio broadcast station owned
18 translators would more likely indicate a station's
19 interest in reaching audiences in areas that lie
20 outside the service area.

21 Q All right. Now finally I would direct your attention
22 to paragraphs 119 and 120 which you can just read to
23 yourself.

24 (Pause)

25 A All right.

- 1 Q Now before today did there come a time when you
2 personally became aware of any of the portions of the
3 Commission's 1990 Notice of Proposed Rulemaking that
4 you just read?
- 5 A Yes, I'm aware of it. I was aware of it before today.
- 6 Q Approximately when?
- 7 A 1994, '95, something like that.
- 8 Q And did you discuss those portions with anyone?
- 9 A Yes, with Jeff Southmayd, my attorney.
- 10 Q And with anyone else?
- 11 A No. Well, possibly, I don't know.
- 12 Q Well, if you don't remember you can say you don't
13 recall.
- 14 A Uh-huh (affirmative), yeah, don't recall.
- 15 Q I take it then that Peninsula did not prepare or file
16 comments in the translator rulemaking proceeding?
- 17 A We did not.
- 18 Q In addition to discussing the Notice of Proposed
19 Rulemaking with Mr. Southmayd did you happen to discuss
20 it with your wife?
- 21 A I don't recall.
- 22 Q Now, the next document I'd like you to focus on -- in
23 case you're wondering the footnote that you're looking
24 for is in the next document.
- 25 A Okay.

1 Q Anyway, the document that you now have before you is
2 styled Report and Order in MM Docket Number 88-140
3 released December 4, 1990. If you could please read
4 paragraph one aloud.

5 A By this Report and Order the Commission is amending the
6 rules governing the FM translator service. The
7 Commission is restructuring the FM translator rules
8 consistent with the intended purpose of this service
9 which is to provide supplementary service to areas in
10 which direct reception of radio broadcast stations is
11 unsatisfactory due to distance or intervening terrain
12 barriers. In particular we revise and clarify the FM
13 translator rules, including new rules for ownership and
14 financial support of translators, methods for selecting
15 among translator applications, the definition of major
16 change in translator coverage area, use of commercial
17 and auxiliary band frequencies, interference criteria
18 and technical requirements for translators.

19 Q Thank you. Could you next direct your attention to
20 paragraph five and read that aloud into the record?

21 A We continue to believe that the proper role for FM
22 translators is that a secondary service intended to
23 supplement the service of FM radio broadcast stations.
24 Further, the rule changes we now make -- we now make
25 reflect our conclusion that the sole purpose of FM